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Hershoff

The CIA: Book Editing Division

Writers working on projects that might offend the government have been warned to be wary of having Harper & Row as a publisher. The warning has been given by the present management of that very publishing house.

Alfred W. McCoy, a Ph.D. candidate in Southeast Asian history at Yale, spent 18 months investigating narcotics operations in Southeast Asia. The resultant book, commissioned by Harper & Row, had been thoroughly examined by attorneys for the publishing house. But then, the CIA asked Harper & Row for permission to review McCoy's book, "The Politics of Heroin in Southeast Asia," prior to publication.

Despite the lessons of the battle to publish the Pentagon Papers, despite the continuing travail of Beacon Press (publishers of the Gravel edition of the Pentagon Papers), despite the First Amendment, Harper & Row acceded to the CIA's request! Seymour Hersh, the most valu-

able addition to the Times Washington bureau in my memory, dug out the story as part of a continuing investigative account of the increasing quantity of heroin coming into this country from Southeast Asia. As Hersh points out (Times, July 22), the CIA's interest in Alfred McCoy's book is due to McCoy's allegations that "both CIA and State Department officials have provided political and military support for America's Indochinese allies actively engaged in the drug traffic; have consciously covered up evidence of such involvement, and have been actively involved themselves in the narcotics trade." The CIA, understandably exacerbated—all the more so because Mr. McCoy has been tes-

tifying before Congressional committees—put pressure on Harper & Row. The CIA did not try seriously to claim that national security is involved. The agency impugns the accuracy of the book and wanted to see it before publication in an attempt to persuade the publisher to make "corrections" so the CIA and other American agencies won't look so bad. (The First Amendment stands even if the CIA had insisted that national security might have been breached, but Harper & Row yielded on a much softer point. That's what is so appallingly surprising after all we have learned from the Nixon administration concerning its intentions with regard to the First Amendment.)

Seymour Hersh quotes B. Brooks Thomas, vice-president and general counsel of Harper & Row, as having no doubts about the book: ("We've had it reviewed by others and we're persuaded that the work is amply documented and scholarly.") Nonetheless, Mr. Thomas adds: "We're taking a responsible middle position. I just believe that the CIA should have the chance to review it."

According to Hersh, the book's author, Alfred McCoy, was given the choice of agreeing with Mr. Thomas's "responsible middle position" or not having his book published by Harper & Row.

Brooks Thomas tells me that's not accurate. An either/or situation, he says, did not develop.

"If McCoy had refused to allow the page proofs to be seen by the CIA," prior to publication I asked Thomas, "would you have published the book?"

"I don't know what we would have done," Thomas answered. "In any case, we persuaded McCoy to let the CIA see it." (My information is that Harper & Row would not have published the book if McCoy had resisted prior viewing by the CIA.)

I am sorry that Mr. McCoy allowed himself to be persuaded. At first, Hersh writes, McCoy refused to go along, but "changed his mind during protracted negotiations."

continued

This is hardly the CIA's first involvement in the processes of publishing in a secrecy. Included in Hersh's story on the surrender by Harper & Row was a statement by Robert Bernstein, president of both Random House and of the Association of American Publishers, that Random House "had twice refused official CIA requests for permission to revise manuscripts."

From what is quoted in the July 22 Times of the official letter to Harper & Row from the CIA, the permission asked in this instance is to review the book. But what the CIA is after, the wording of the letter makes clear, is permission to revise.

Even if not one word is changed by Harper & Row after the CIA's "review," consider what this precedent tells other writers who

might consider working on a Harper & Row book which is likely to offend an agency of the government. It's as if the New York Times were to hold up a David Burnham story on this city's Police Department until officials of the department were first given a chance to argue "the facts" with Burnham and the Times. Or, it's as if Seymour Hersh himself had been required to submit his Mylai manuscript or page proofs to the Army for "checking" and for attempts at "persuading" the publisher to revise it before the book could be published.

Although, in my conversation with him, Brooks Thomas appeared unable to understand this point, the "chilling" effect of prior submission of a controversial manuscript to the government agency it attacks could not be more clear. And such a submission, it is equally clear, fundamentally subverts the First Amendment.

Having recently been involved in the preparation of a book on governmental secret surveillance, I told Thomas, there is no way I would allow myself to be forced to submit the manuscript or page proofs to the FBI before the book could be published.

"Why not?" said Thomas.

A depressing response, I would think, for present and prospective Harper & Row authors engaged in investigative reporting that's critical of government.

A footnote: As might be surmised, the agreement between Harper & Row and the CIA that McCoy's book could be reviewed by the CIA prior to publication was of a "confidential" nature. We are again in Sy Hersh's debt.

I wish, however, that the CIA had been as diligent as it had also given front-page attention—to another, even more alarming CIA incursion into the freedom to publish. I refer to the case of Victor Marchetti, who after 14 years with the CIA, resigned from that agency in 1969. He subsequently contracted with Alfred A. Knopf, Inc., to write a non-fiction book about the CIA.

Before Marchetti's book for Knopf had even been written, the government obtained a permanent injunction in Federal District Court on May 19 requiring that Marchetti must first obtain CIA permission before the book can be published. Never before in American history have a writer's First Amendment rights been circumscribed at the point of the germination of an idea. Remember, the book does not yet exist.

The May 19 court decision did not appear in the New York Times—despite the fact that the ramifications of the case extend far beyond the Pentagon Papers. In that ruling, U.S. District Judge Albert V. Bryan has ordered Marchetti "to submit to the Central Intelligence Agency, for examination 30 days in advance of release to any person or corporation any manuscript, article or essay, or other writing, factual, fictional, or otherwise, which relates to or purports to relate to the Central Intelligence Agency intelligence, intelligence activities, or intelligence sources and methods."

Nor can Marchetti afterwards release any such material "without prior authorization from the Director of Central Intelligence."

A Federal District Judge has made Richard Helms an official, unilateral censor. (That's not news?)

Although the government claims that anything Marchetti writes with regard to the CIA would "result in grave and irreparable injury to the interests of the United States" (although the government, of course, hasn't seen a word of this non-existent book), its main legal argument is that Marchetti has broken his contractual agreements with the CIA. When he joined the agency in October 1955, Marchetti signed a "Secrecy Agreement." When he left the CIA in September 1960, Marchetti signed a "Secrecy Oath": "I will never divulge, publish, or reveal by writing, word, conduct, or otherwise, any information relating to the national defense and security and particularly information of this nature relating to intelligence sources, methods, and operations

and specifically Central Intelligence sources, methods, personnel, fiscal data, or security measures to anyone without the express written consent of the Director of Central Intelligence or his authorized representative."

As Publishers Weekly headlined an editorial on the Marchetti case: "YOU CAN'T SIGN AWAY FIRST AMENDMENT RIGHTS."

And in the Washington Post (June 16), Alan Barth observed: "Here is an oath of secrecy so sweeping that it amounts almost to a vow of perpetual silence. . . . It is a very serious constitutional question whether a man can waive so basic a constitutional right—any more than he could put himself, by contract, into involuntary servitude for life in contravention of the terms of the 13th Amendment. In any case, so vague and so needlessly sweeping a renunciation of constitutional safeguards seems utterly foreign to the character of American law and its insistence upon ascertainable safeguards."

But what if this presently non-existent book did gravely injure "American interests." (Now there's a term to conjure with, constitutionally and otherwise.) Well, obviously, there's no way of knowing until the book is written. If the government then has reason to believe Marchetti has violated the Espionage Act or any other statute, the burden of proof is on it, the government, to demonstrate Marchetti's culpability, if any. And that would have to be done through an adversary proceeding in a court of law.

To restrain this book before it is written, let alone published, is an eerily ominous act. Furthermore, as Melvin Wulf, legal director of the American Civil Liberties Union puts it: "For the first time in the nation's history, an author has been permanently enjoined from publishing and speaking on an issue of public importance without first securing government approval."

Judge Bryan's decision was appealed by the ACLU (Marchetti's counsel) on May 31 before the U.S. Court of Appeals, Fourth Circuit. (Bryan had agreed with the government that Marchetti's contractual agreements with the CIA had removed his case from "the scope of the First Amendment.") As of this writing, the Court of Appeals has not issued its ruling. When it does, I hope notice is taken of it by the New York Times which, after some preliminary coverage, failed to report the District Court's issuance of a prelimi-

bary injunction on May 15 Bryan's issuance of the permanent injunction. **Approved For Release 2005/07/01 : CIA-RDP84-00499R000100040004-8** appeal proceedings on May 31.

Joining with the ACLU in separate amicus curiae briefs are the Authors League and the Association of American Publishers. The former noted that the public certainly is entitled to find out about government agencies—the CIA among them—which vitally affect the interests of the citizenry.

"One of the most useful sources of this discussion (and) criticism," the Authors League emphasized, "are former government employees—ex-Presidents (such as Presidents Eisenhower and Johnson), a former director of the CIA such as Allen Dulles, and the many other highly placed officials who have written books and articles about defense, foreign affairs, intelligence, disclosing much information that had not previously been made known to the public. Under the District Court's opinion, the government could accomplish by contract what it could not achieve by statute—prior censorship of such discussion." (Emphasis added—N.H.)

In its brief, the Association of American Publishers pointed out that at issue are not only

Marchetti's constitutional rights but also those of the public to know and be informed. And that brings us back to the CIA's attempt at prior restraint (review) of Alfred McCoy's book.

The question of Harper & Row's decision on this matter was on the July 18 agenda of the Freedom to Read Committee of the Association of American Publishers. A divided committee, with the weight somewhat against Harper & Row's position, decided finally to take no action on what Harper & Row had done. (Seymour Hersh tried to attend that meeting as a representative of the press but was asked to leave because his presence might have a "chilling" effect on the deliberations of the committee. He did leave, and that's all I know as of now, not yet having been able to contact Hersh who is on vacation.)

According to my source—who is decidedly not Seymour Hersh—there were 11 voting members present, representing various publishing houses. The discussion was brisk, but alas, did not result in a statement by the Freedom to Read Committee. That's unfortunate, because I think many authors would have been encouraged if a majority of this committee of the Association of American Publishers had decided to be openly critical of Harper & Row's action.

As one member of the committee feel very strongly that any prior restraint—or any yielding whatever to an attempt at prior restraint—is wrong. I mean not only prior interference by the government, but by anybody. There are cases of industries wanting to 'review' a book critical of their operations. And we haven't allowed that either. Like other responsible publishers, we do rely on expert readers of manuscripts and on the opinions of our lawyers. But we do not and will not allow outside interests to examine a book before publication. I very much oppose Harper & Row's position in this instance."

"What of Harper & Row's assurance," I said, "that it has made no commitment to make any changes the CIA might ask for?"

"Letting the CIA see the book before publication," he said, "still has a chilling effect, no matter

what commitments are made. And there is the further danger that any government agency getting a chance to look at galleys before publication can dry up a writer's sources. Government has a lot of ways of pressuring people. So, on that score alone, you may be putting your writer in a vulnerable position. And in any case, by letting outside institutions see a

book before it's out, you place your writer in the position of having to defend himself before public discussion can begin. If you have confidence in your writer, if you've also had other experts read the book, why place this burden on him? A primary function of a publisher is to act on behalf of his author. To place an author in even the slightest danger of prior restraint is hardly acting on his behalf. Or on behalf of the reader."

The Association of American Publishers has been a valuable force for the protection of the First Amendment—in the Marchetti case, in the government assault on Beacon Press, and on other occasions. For it to remain publicly silent on Harper & Row's yielding to government pressure is most disappointing. I hope the

AAP's Freedom to Read Committee consider this matter again—soon.

After writing the above, I heard from Brooks Thomas. The CIA had sent in its review, challenging the accuracy of certain of McCoy's sources and thereby suggesting certain changes. Upon considering the CIA review, "it is our present intention," Thomas told me, "to publish the book as McCoy wrote it—without changing even a comma."

I tried to point out to him that he had not, as he seemed to think, won a victory at all. Quite the contrary. Although Brooks Thomas emphasizes that this was an exceptional case—that Harper & Row had never done this before and probably would never feel the need to do it again—he disagreed

with my contention that Harper & Row has set a dangerous precedent.

Other letters, however, may well go out from the CIA and other government agencies to publishers, underlining how "reasonable" Harper & Row was in permitting prior review of the McCoy book. And if other publishers succumb—even though they do not eventually change a word of the book—their writers will be wondering what pressures are being put on their sources between final review time and publication date.

But sources aside, damn it, the government has no constitutional business seeing anything before publication. And certainly not outside a court of law without a full adversary proceeding protecting the author's constitutional rights. And the public's. That's what Harper & Row gave away, even if not a comma of McCoy's book is changed.

Surely this precedent ought still to be up for discussion at the Association of American Publishers. Is the AAP going to commend Harper & Row for its "victory"? Is it going to remain silent? Or, despite the gentlemanly nature of book publishing, is it going to express any concern—in this specific case—about the inclusion of the CIA in the editing procedures of a publishing house—whether or not the CIA's recommendations are followed.

Opinions from writers, and others in publishing, about the CIA-as-advisory-editor are welcome.

—Nat Hentoff